



THE ATTORNEY GENERAL
OF TEXAS

Gerald C. Mann
~~JOHN C. HARRIS~~
ATTORNEY GENERAL

AUSTIN 11, TEXAS

Honorable R. V. Rayford
County Auditor
Rusk County
Henderson, Texas

Dear Sir:

Opinion No. 9-4001

Re: (1) Whether school district may
issue warrants payable over a
term of several years.
(2) Whether taxes for fiscal year
beginning September 1, 1941, but
collected in August, 1941, are
for scholastic year 1940-1941.

We have received your letter of recent date which we quote in part
as follows:

"I desire an opinion from you as to two ques-
tions pertaining to the public schools, with which
we are confronted in this county. A large percent-
age of the scholastics of Rusk County are transpor-
ted to schools by buses which are owned by the schools.
Several of the school districts, lacking the funds to
pay for buses in cash, have bought them on credit,
paying part of the purchase price in cash and execut-
ing warrants of the school district, payable over a
term of several years, for the balance. The first
question to which I desire an answer is this: Do
such notes or contracts for school buses constitute
valid obligations, enforceable against the school
districts incurring such obligations?"

Article 2749, Revised Civil Statutes, provides in part as follows:

"... provided, that the trustees, in making
contracts with teachers, shall not create a defici-
ency debt against the district."

It was held by the Supreme Court of Texas in the case of Collier
v. Peacock, 54 S.W. 1025, that a board of trustees was not authorized to
execute a teacher's contract which would cause a deficiency debt against
the school fund of the district for any particular year. We quote the
following from the opinion of the court:

" . . . This limitation upon the power of the trustees in making the contract with teachers necessarily limits the payment of the debts that might be contracted to the amount of the fund which belonged to the district for that year, and any debt contracted greater than that would be a violation of the law, and constitute no claim against the district."

The same principle has been extended and applied not only to teachers' contracts but also to other obligations, such as the purchase of equipment, and permanent improvements to the school property.

You cited in your letter the case of Templeman Common School District v. Boyd B. Head Company, 101 S.W. (2d) 352. In this case two warrants were issued in payment of septic toilets. These were renewal warrants, and were dated February 22, 1933, due February 22, 1934, and April 1, 1934. There was no showing that the district had any available funds on hand for the year for which the purchase was made, and the court in holding that recovery could not be had on said warrants had the following to say:

"While the language used in said statute refers specifically to a deficiency created in the employment of teachers, it has been held that it applies with equal force to debts incurred in the purchase of equipment. In this connection, the Court of Civil Appeals in Stephenson v. Union Seating Co., 26 Tex. Civ. App. 16, 62 S.W. 128, 129, in referring to the holding of the Supreme Court in Collier v. Peacock, supra, said:

"It is held that a warrant for a teacher's salary in excess of the sum apportioned to the district for the year cannot be made a charge upon the fund of a subsequent year. Article 3959 (now Article 2749) was construed as a limitation upon the power of the trustees to contract any debt which would cause a deficiency in the school fund of the district. While the article applies alone to contracts for teachers' salaries, we think the construction placed upon it by the supreme court applies with equal force to the articles controlling the purchase of school furniture."

"The Supreme Court refused a writ of error in that case. This seems to be the logical construction to be placed on the statute, for its purpose, at least in part, is to avoid a dissipation in advance of the funds to be appropriated for the support of the school during subsequent years and thus render more certain the maintenance of a public free school in each district for at least

six months in each year, as called for in article 7, § 3, of the Constitution; and, if in keeping with that purpose a deficiency debt cannot be created in the employment of a teacher, the one indispensable essential of a school, it reasonably follows that such a deficiency cannot lawfully be created in the purchase of equipment. See in this connection 37 Tex. Jur. 972; *Warren v. Sanger Independent School Dist.*, 116 Tex. 183, 288 S.W. 159."

The same doctrine has been applied to independent school districts. *First Nat. Bank of Athens v. Murchison Independent School Dist.*, 114 S.W. (2d) 382; *Trustees of Crosby Independent School Dist. v. West Disinfecting Co.*, 121 S.W. (2d) 661. In the *Murchison* case, the suit was upon warrants maturing one, two and three years after date, bearing six per cent interest, payable out of the local maintenance fund for furniture or money advanced to purchase furniture. The following was stated by the court:

"Nor were there, for particular years over and above the amounts necessary to conduct the school any available funds out of which these debts could be paid."

We quote from the opinion of the Commission of Appeals in the case of *Harlingen Independent School Dist. v. C. E. Page & Bro.*, 48 S.W. (2d) 983:

"From the above it is evident that the powers of the school board to expend the funds of the district are at all times limited to an available fund, and to the particular thing prescribed by the statute. The board never has any authority to expend funds that are not available."

We see no reason to differentiate the announced doctrine as to the purchase of school buses, and we think that the language employed in the cited cases is amply broad to cover such purchases. It follows, therefore, that the warrants given in payment of the buses are invalid.

We quote further from your letter:

"The fiscal year for schools runs from the first of September of one year to the first of the same month of the next year. Several of the larger school districts in Rusk County are in the oil field. In order to get the two per cent. discount offered by the taxing authorities for payment of ad valorem taxes for the year 1941, many taxpayers have paid their taxes in full in August, my information being that approximately

ninety percent. of the 1941 taxes were paid in that month. The second question I submit to you is this: Do such taxes which are collected in August, 1941, become a part of the school funds for the scholastic year 1940-1941, making the same available for the payment of school obligations incurred during that year, or do such taxes constitute a fund for the operation of the schools for the scholastic year 1941-1942?

"If your answer to the last question is that such taxes may be applied to payment of obligations incurred for the year 1940-1941, then please answer this further question: Could such taxes so collected in August, 1941, be lawfully applied to the payment of a warrant issued during 1940 for part of the purchase price of a bus purchased at the time which such warrant was issued?"

We assume that the allowance of a discount was made under the provisions of Article 7255b, Vernon's Annotated Civil Statutes, which authorizes a discount on ad valorem taxes under the terms set out in the statute.

Regardless of the fact that the taxes were collected before September 1, 1941, which marked the beginning of the new fiscal year 1941-1942, they were assessed for that fiscal year, and, therefore, constitute a fund for the operation of the schools during that year. It follows, in view of our answer to your first question, that such tax moneys may not be used for the payment of obligations incurred during the fiscal year 1940-1941.

Our answer to your second question renders unnecessary an answer to your third question.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

s/ Glenn R. Lewis
Glenn R. Lewis
Assistant

APPROVED OCT 2, 1941

s/ Grover Sellers
FIRST ASSISTANT
ATTORNEY GENERAL

By

s/ George W. Sparks
George W. Sparks